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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JAMAL REHMAN, Defendant and Appellant.	B232174 (Los Angeles County Super. Ct. No. GA079643)
In re JAMAL REHMAN On Habeas Corpus.	B237389 (Los Angeles County Super. Ct. No. GA079643)

APPEAL from a judgment of the Superior Court of Los Angeles County, Patrick Hegarty, Judge. Judgment affirmed; writ denied.

Robert L. Hernandez, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Jamal Rehman was charged by felony complaint with two counts of first degree residential burglary (Pen. Code, § 459).[1] The only factual record of the crimes in the appellate record is set forth in the probation report, which shows that on March 24, 2010, defendant was one of three men who participated in burglarizing private storage units in an underground parking garage serving a multi-unit condominium.

On July 30, 2010, before the preliminary hearing, defendant entered a disposition under which he waived his rights and agreed to plead no contest to both counts of residential burglary, in exchange for which the court would continue sentencing for six months and place him in a six-month live-in drug program. If defendant failed to complete the program, he would be sentenced to a minimum of four years in state prison. An alternative disposition was that defendant would plead to one count of residential burglary in exchange for an immediate sentence of the middle term (four years). In response to a question from his attorney, defendant affirmed that he wanted to plead no contest to both offenses, even though they are strikes, in order to receive a drug program and avoid an alternative disposition that would involve a state prison sentence.

On August 18, 2010, the court released defendant on his own recognizance to Assessment Intervention Resources for purposes of transportation to a drug treatment program. He was ordered to enroll in and complete a six-month program and to appear on November 15, 2010. However, on that date defendant failed to appear. A letter sent to the court by the drug treatment program stated that defendant's whereabouts were unknown. The court issued a bench warrant for defendant's arrest.

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[1] All further statutory references are to the Penal Code.

Defendant next appeared in court on February 1, 2011 for sentencing, having been arrested on the bench warrant. Defendant addressed the court, stated that he had been given a chance and made a "big mistake," and asked for another chance at drug rehabilitation. The court denied his request, and sentenced him to the midterm of four years on each count of residential burglary, to run concurrently.

Defendant filed a notice of appeal based on the sentence or other matters occurring after the plea that do not affect the validity of the plea. His court appointed attorney filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and asked that we independently examine the record for appellate issues. Counsel filed a declaration stating that he had advised defendant in writing that he could file a supplemental brief with the court.

Defendant filed such a brief, as well as a petition for writ of habeas corpus. In his brief, defendant contends that the plea agreement was invalid, and that he was improperly induced to enter it. He asserts that the court promised him probation, but he was ineligible for probation under section 1203, subdivision (k), because in this case he was convicted of felonies (first degree residential burglaries) that were serious felonies (§ 1192.7, subd. (c)(10)) while he was already on probation for another felony.[2]

Defendant cannot raise this issue on appeal, because it goes to the validity of his plea, and he failed to obtain a certificate of probable cause under section 1237.5. In any event, the contention fails.

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[2] Defendant also contends that the residential burglaries were violent felonies under section 667.5, subdivision (c)(21), for which probation was unavailable. That provision makes first degree burglary a violent felony, if "it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary." In entering his no contest plea, defendant did not admit such an allegation, and thus section 667.5, subdivision (c)(21), does not apply.

It is true that the advisement form which defendant completed stated that defendant would receive three years formal probation and residential treatment. But when defendant appeared before the court, the court made clear that the deal which he was entering was not for probation, but for a postponement of sentence for six months and completion of a drug treatment program. If he failed, he would be sentenced to a minimum of four years in state prison. The only other offer was an immediate state prison sentence to the midterm (four years) following a plea to one count. Defendant affirmed that he understood, and thus the record rebuts any claim that defendant was improperly induced to enter the plea based on a false promise of probation.

We note, also, that defendant's assertion that probation was not available is incorrect. Section 1203, subdivision (k), provides: "Probation shall not be granted to, nor shall the execution of, or imposition of sentence be suspended for, any person who is convicted of a violent felony, as defined in subdivision (c) of Section 667.5, or a serious felony, as defined in subdivision (c) of Section 1192.7, and who was on probation for a felony offense at the time of the commission of the new felony offense." Defendant committed the instant offenses on March 24, 2010. The probation report reflects that defendant was not on probation on that date. Rather, he was on a grant of deferred entry of judgment under section 1000, et seq. for a violation of Health and Safety Code section 11350, subdivision (a). On March 26, 2010, after his commission of the present offenses, he was placed on summary probation. Thus, section 1203, subdivision (k), did not forbid a grant of probation in the instant case, and the initial promise of probation was not improper.

Defendant contends that his sentence of four years was improper under the plea agreement. However, as we have noted, defendant was expressly informed

that he would be sentenced to a minimum of four years if he failed to complete a drug program.

He also asserts that when the court ordered him to serve four years in state prison, the court mistakenly believed that it had already sentenced him at the time of the plea. The record shows that the court initially misspoke, saying that it had already sentenced defendant, but then corrected itself to say that it had "appointed A.I.R.," an acronym for Assessment Intervention Resources, the organization to which defendant had been released for placement in a drug program. Thereafter, the court sentenced defendant to a total of four years in state prison, consistent with the negotiated disposition. The court was clearly not under the misimpression that defendant had already been sentenced.

In his habeas corpus petition, defendant repeats the same arguments that he has raised on appeal. For the same reasons, the arguments lack merit.

We have independently reviewed the record and are satisfied that no arguable issue exists. Defendant has, by virtue of counsel's compliance with the *Wende* procedure and our independent review, received effective appellate review of the judgment entered against him. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-279; *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

DISPOSITION

The judgment is affirmed. The petition for writ of habeas corpus is denied.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.